ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO

BILL NO. <u>B-136</u>

ORDINANCE NO. 2006-143

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING ARTICLE 14 TO CHAPTER 9 OF THE FRESNO MUNICIPAL CODE, RELATING TO ABANDONED SHOPPING CARTS.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 14 is added to Chapter 9 of the Fresno Municipal Code to read:

ARTICLE 14

ABANDONED SHOPPING CARTS

Section	9-1401.	Title.
	9-1402.	Findings and Purpose.
	9-1403.	Definitions.
	9-1404.	Unlawful Possession and Abandonment of
		Carts.
	9-1405.	Cart Owner Requirements.
	9-1406.	City Retrieval of Carts.
	9-1407.	Impoundment, Retrieval, Payment of
		Costs.
	9-1408.	Immediate Retrieval by City of Identified
		Carts.
	9-1409.	Severability Clause.
	9-1410.	Cumulative Remedy.

SECTION 9-1401. TITLE. This article shall be known as the "Abandoned Shopping Cart Ordinance."

SECTION 9-1402. FINDINGS AND PURPOSE. The Council of the City of Fresno finds that abandoned shopping carts in the city create potential hazard to

Passed 9/19/06 Effective 10/27/06 the health and safety of the public, and interfere with pedestrian and vehicular traffic and create a public nuisance. The accumulation of abandoned carts, sometimes wrecked and/or dismantled on public and private property tends to create conditions that reduce property values, and promote blight and deterioration and result in a public nuisance. This article is intended to insure that measures are taken by the owners of shopping carts to prevent the removal of the shopping carts from the owner's premises, to make removal of the cart a violation of this Code, and to facilitate the retrieval of abandoned shopping carts in a manner consistent with State law.

SECTION 9-1403. DEFINITIONS. The definitions set forth in this section shall govern the application and interpretation of this article.

- (a) "Abandoned Cart" shall mean any cart that has been removed, without the written consent of the owner, from the owner's business premises or parking area of the retail establishment of which the cart owner's business premises are located and is located on either public or private property. The owner's business premises may include a multi-store shopping center with shared areas of parking and public access.
- (b) "Abandoned Cart Prevention Plan" shall mean a document submitted by the owner pursuant to this article that provides a plan for how the owner will prevent carts from becoming abandoned and, if accepted by

the Director as adequate, an implied promise by the owner to comply with the plan.

- (c) "Cart" or "Shopping Cart" means a basket which is mounted on wheels or a similar device generally used in a retail or commercial establishment by a customer for the purpose of transporting goods of any kind, including a basket used in a laundromat or similar business.
- (d) "Director" means the Director of the Planning and Development

 Department or his/her designees or such other person designated by the City

 Manager to administer this article.
- (e) "Owner" shall mean a person or business owning or using shopping carts in connection with its business.

SECTION 9-1404. UNLAWFUL POSSESSION AND ABANDONMENT OF CARTS. Any person who violates any prohibition of this section is guilty of a misdemeanor as provided in California Business and Professions Code Section 22435.2. This section shall not apply to carts removed as authorized by the owner, including for the purposes of maintenance, repair or disposal.

(a) It shall be unlawful for any person to remove a shopping cart or laundry cart from the premises or parking area of a retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

///

- (b) It shall be unlawful for any person to be in possession of any shopping cart or laundry cart that has been removed from the premises or the parking area of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- (c) It shall be unlawful for any person to be in possession of any shopping cart or laundry cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- (d) It shall be unlawful for any person to leave or abandon a shopping cart or laundry cart at a location other than the premises or parking area of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- (e) It shall be unlawful for any person to alter, convert, or tamper with a shopping cart or laundry cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- (f) It shall be unlawful to be in possession of any shopping cart or laundry cart while that cart is not located on the premises or parking lot of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

SECTION 9-1405. CART OWNER REQUIREMENTS. All owners of carts shall comply with the requirements of this section.

- (a) Cart Identification Required. Every owner of shopping carts, as defined by this article, shall mark or cause the cart to be marked and identified conspicuously with: the name, address, and telephone number of the owner; and a notice that provides that the removal of the cart from the premises of the owner is a violation of State law. Every owner of more than twenty-five (25) shopping carts shall also mark or cause the cart to be conspicuously marked to provide a name and toll free telephone number of a party that is responsible for retrieval of the cart.
- (b) Daily Cart Retrieval. All owners, regardless of the number of carts owned, shall ensure that all carts are secured from public access after close of business hours.
- (c) Abandoned Cart Prevention Plan. Every owner who provides more than twenty-five (25) carts to their customers shall develop, implement and comply with the terms and conditions of an Abandoned Cart Prevention Plan to prevent the unauthorized removal by any person of any carts from the owner's premises and, if removed, to retrieve the cart within forty-eight (48) hours of the removal or notice of the removal. The Abandoned Cart Prevention Plan shall be submitted on a renewable annual basis and shall include the following elements:

- (1) Name of Business/Owner. The name of the owner and the business name, the physical address where the business is conducted, name, address and phone number(s) of the on-site and off-site owner if different.
- (2) Inventory of Carts. A complete list of all carts maintained on the owner's premises.
- (3) Community Outreach. A description of a community outreach process under which the owner shall cause notice to be provided to customers that the removal of carts from the premises is prohibited and is a violation of state and local law. This notice may include, but is not limited to, flyers distributed at the premises, warnings on shopping bags, direct mail, announcements using intercom systems at the premises, web site or other means demonstrated to be effective to the reasonable satisfaction of the director.
- (4) Signs. Multi-lingual signs shall be placed prominently and conspicuously at all entrances and exits to the cart owner's premises, including the parking areas, that provide a notice of substantially the following information: "REMOVAL OF SHOPPING CARTS FROM THESE PREMISES IS PROHIBITED BY STATE LAW

(B&P § 22435.2) AND WILL SUBJECT THE VIOLATOR TO A MAXIMUM FINE OF \$1000.00 AND/OR ONE YEAR IN JAIL."

- (5) Physical Loss Prevention Measures. A description of the specific measures that the owner shall implement to prevent cart removal from the premises. These measures may include, but are not limited to, electronic or other disabling devices on the carts so they can not be removed from the premises, effective management practices, use of courtesy clerks to accompany customers and return the carts to the store, use of security personnel to prevent removal, security deposit for use of cart, or other demonstrable measures acceptable to the Director that are likely to prevent cart removal from the premises.
- (6) Employee Training. A description of an ongoing employee training program that shall be implemented and designed to educate new and existing employees on the Abandoned Cart Prevention Plan and conditions contained therein no less frequently than annually.
- (7) Mandatory Cart Retrieval. A plan for retrieval of abandoned carts, including the requirements of sub-section (b), and plans for recovery of all abandoned carts within forty-eight (48) hours. This plan must include either a plan for the owner or the owner's

employees to retrieve the carts or for the owner to have entered into a contract for cart retrieval services that is approved by the city. The plan for retrieval shall include providing to the city, the name and toll free phone number of the party who will be responsible for the retrieval of the carts which the city may publish. Whoever is identified by the owner as the party responsible for retrieval of the carts shall be made available for cart retrieval six (6) days a week, eight (8) hours a day or during the owner's business hours, whichever is shorter.

- (8) Multiple Businesses. Two or more businesses may collaborate and submit a single plan.
- (d) Administration of the Abandoned Cart Prevention Plan. The Abandoned Cart Prevention Plan shall be administered under the provisions of this subsection.
 - (1) At the time the owner submits the Abandoned Cart
 Prevention Plan, the owner shall pay a fee for the review and
 administration of the plan as set forth in the Master Fee Schedule.
 - (2) The Director must approve or deny the Abandoned Cart Prevention Plan within forty-five (45) days of its submission. The plan may be denied on the grounds that it fails to include the elements required under this section or the plan is inadequate or insufficient to fulfill those required elements. If the plan is denied, the Director shall

do so in writing and provide an explanation for the basis of his or her decision. The owner has twenty (20) days, subject to an extension by the Director, to submit a new plan or appeal the Director's decision to the Administrative Hearing Officer pursuant to the Administrative Hearing Ordinance in Article 5 of Chapter 1.

- (3) Once a plan is approved, the owner has thirty (30) days to begin implementation. If, at any time after the plan has been approved, the Director determines that the plan is inadequate to fulfill the required elements of this section, the Director may, in writing, require the owner to modify or submit a new plan. Such a modification may include, but is not limited to, requiring the owner to identify a new person to retrieve abandoned carts or changing the physical loss prevention measure. If the Director requires the owner to modify or submit a new plan, the owner shall be given a reasonable time to comply and shall be provided an appeal to the Administrative Hearing Officer pursuant to Chapter 1, Article 5. A new plan or modified plan is subject to a fee for its review as provided in the Master Fee Schedule.
- (e) Violations. Violation of any provision of this section, including, but not limited to, failure to submit a plan or comply with a plan submitted, or failure to conduct the required daily sweep, is a violation of this article and

the city may pursue any available remedy provided under the Code for a code violation, including the issuance of an administrative citation under Section 1-406.

SECTION 9-1406. CITY RETRIEVAL OF CARTS. The city may retrieve an abandoned cart from public property (or private property with the consent of the property owner) in the following circumstances:

- (a) Where the location of the shopping cart will impede emergency services.
- (b) When the abandoned cart does not identify the owner of the cart as required in Section 9-1405.
- (c) When the city has contacted either the owner, the owner's agent, or the entity contracted with by the owner under the Abandoned Cart Prevention Plan and actually notified them of the abandoned cart and the cart has not been retrieved within seventy-two (72) hours.

SECTION 9-1407. IMPOUNDMENT, RETRIEVAL, PAYMENT OF COSTS.

- (a) If the city retrieves a cart, the city shall hold the cart at a location that is reasonably convenient to the owner of the shopping cart and open for at least six (6) hours on business days.
- (b) Where the city has not already provided notice to the owner that an abandoned cart needs to be retrieved, the city shall notify the owner that the city has impounded their cart and provide information as to the carts

location, how the cart may be retrieved, that failure to retrieve the cart may result in the cart's sale or destruction, that the owner will be responsible for the city's costs, and that the city may fine owners after the city has picked up the owner's carts more than three times. In the case of a cart that does not provide adequate identification or markings to determine its owner the city shall only be required to notify the cart owner if the city obtains actual knowledge of the owner's identity.

- (c) If a cart is not retrieved by its owner within thirty (30) days after the owner has received notice of the cart being impounded, or if the cart's owner cannot be determined, within thirty (30) days after the cart has been impounded, the cart may be sold or destroyed by the city or its agents and/or contractors.
- (d) The Director may issue an administrative citation of fifty dollars (\$50), under the procedures in Section 1-406, against any cart owner for any day, after the first three days, during any specified six-month period, in which the city picks up a cart under the circumstances found in Section 9-1406.
- (e) No cart shall be released to its owner under the procedures in this section unless the owner pays a fee for the city's actual costs to retrieve and store the cart. The city's costs to retrieve and store may be provided in the Master Fee Schedule.

SECTION 9-1408. IMMEDIATE RETRIEVAL BY CITY OF IDENTIFIED CARTS. Notwithstanding any other section of this article, the city may immediately retrieve a cart that does have the appropriate markings and identification under Section 9-1405 provided the city actually notifies the owner within twenty-four (24) hours that the city has impounded the cart and provides information to the owner where and how the cart may be retrieved. The city may not collect a fee or impose a fine, nor count a retrieval for purposes of a fine under Section 9-1407(d), if the cart retrieved by the city under this section, is collected by the owner within three (3) business days of the actual notice to the owner by the city. If the cart is not retrieved within three (3) business days by its owner, the city may collect its actual costs and impose a fine and dispose of the cart consistent with the provisions of Section 9-1407.

SECTION 9-1409. SEVERABILITY CLAUSE. If any provision, paragraph, word or section of this article is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections shall not be affected and shall continue in full force and effect.

SECTION 9-1410. CUMULATIVE REMEDY. Nothing herein is intended to limit the city from pursuing any other remedy available at law or in equity against any person or entity maintaining, committing, or causing a public nuisance or any other violation of the Code or State or Federal law.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

STATE OF CALIFORNIA) COUNTY OF FRESNO) ss. CITY OF FRESNO I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the 19th day of September, 2006. AYES : Boyajian, Calhoun, Dages, Perea, Sterling, Westerlund, Duncan NOES None ABSENT : None ABSTAIN: None September 26 , 2006 Mayor Approval: Mayor Approval/No Return: N/A , 2006 N/A______, 2006 Council Override Vote: REBECCA E. KLISCH City Clerk APPROVED AS TO FORM: CITY ATTORNEY'S OFFICE

KCP:dlv [38718dlv/ord] (08-21-06)